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In re Application of :
DVIR *et al* :
U.S. Application No.: 10/536,555 :
PCT No.: PCT/US02/12443 :
Int. Filing Date: 08 July 2005 :
Priority Date: 19 July 2004 :
Docket No.: 00022779USU/2279 :
For: APPARATUS AND METHODS FOR :
THE SEMI-AUTOMATIC TRACKING :
AND EXAMINING OF AN OBJECT OR :
AN EVENT IN A MONITORED SITE :

DECISION

This is a decision on applicants' "Letter" filed 05 June 2008 which is treated as a petition under 37 CFR 1.181.

BACKGROUND

On 24 October 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) and a \$130.00 surcharge fee must be provided. Applicants were given two months to respond with extensions of time available under 37 CFR 1.136(a).

On 05 March 2008, a "Status Request" was filed.

On 23 May 2008, the DO/EO/US mailed a Notification of a Defective Response (Form PCT/DO/EO/916) notifying applicants that the requirements set forth in the Form PCT/DO/EO/905 mailed 24 October 2007 were still required. Specifically, applicants were requested to provide a declaration in compliance with 37 CFR 1.497(a) & (b) and the surcharge fee. Applicants were given one month to respond, or within any time remaining in the Form PCT/DO/EO/905 mailed 24 October 2007.

On 05 June 2008, applicants filed the subject petition along with the \$130.00 surcharge fee.

On 08 September 2008, a "Second Status Request" was filed.

DISCUSSION

In the response filed 05 June 2008, applicants provided the \$130.00 surcharge fee as required. Applicants also state that a "Declaration and Power of Attorney form executed by Igal DVIR and Moti Shabti were included with the papers filed 05 June 2008.

HOWEVER, AN EXECUTED DECLARATION WAS NOT INCLUDED WITH THE PAPERS FILED 05 JUNE 2008.

Applicants claim that the Form PCT/DO/EO/905 mailed 24 October 2007 was not received until 02 June 2008 when Suzanne Lombardo checked PAIR after receiving the Form PCT/DO/EO/916. Applicants claim that were waiting for the Form PCT/DO/EO/905 to be issued to submit the declaration. Applicants state that they should not be charged an extension of time fee.

It is first noted that the Form PCT/DO/EO/916 provides applicants one month to respond with no extension of time fees. Therefore, the response filed 05 June 2008 (if it contained an acceptable declaration) would not have been charged an extension fee. However, applicants did not submit an executed declaration within this time period. Moreover, the time period with extensions of time under 37 CFR 1.136(a) noted in the Form PCT/DO/EO/905 mailed 24 October 2007 has expired.

As such, the above-captioned application is abandoned.

Regarding applicants' claim that the Form PCT/DO/EO/905 mailed 24 October 2007 was not received, the showing required to establish the failure to receive an Office communication consists of:

- (1) a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO;
- (2) a statement that the Office action was not received at the correspondence address of record;
- (3) a statement that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received; and,
- (4) a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed is required.

See § 711.03(c)(1)(A) MPEP.

In this case, applicants state that the Form PCT/DO/EO/905 was not received. Applicants must also provide a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record

with the USPTO. Moreover, applicants must provide a statement that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. Finally, applicants must provide a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed.¹

For these reasons, applicants have failed to establish the failure to receive the Form PCT/DO/EO/905 mailed 24 October 2007.

CONCLUSION

Applicants' petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The above-captioned application is hereby **ABANDONED**.

If reconsideration on the merits of this petition is desired, a proper response establishing nonreceipt of the Form PCT/DO/EO/905 mailed 24 October 2007 must be filed within **TWO (2) MONTHS** from the mail date of this decision. A declaration in compliance with 37 CFR 1.497(a) and (b) must also be provided with any response.

Any further correspondence with respect to this matter may be filed electronically via the USPTO EFS-Web, by facsimile to (571) 273-0459, or if mailed addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450.



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¹ Section 711.03(c)(1)(A) of the MPEP expands on the docket record requirement and states that:

A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question.